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# (16,974.)

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1899.**

No. 127.

THE STEAMSHIP "PANAMA," MANUEL QUEVEDO, CLAIMANT, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA
*vs.*
THE STEAMER PANAMA. } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest, against the s-eam vessel Panama, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, William H. Everett, Lt. commander of the United States Navy, in and with the United States ship of war the Mangrove, her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel Panama, with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said Panama, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd) J. N. STRIPLING,
*U. S. Attorney, S. D. of Florida.*

Let attachment and mo-tion issue as prayed, returnable Wednesday, *day of* 11th May, 1898 A. D., at 10.30 a. m.

Entered as of course.

(S'd) E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk.*

Endorsed: Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

2 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Panama and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, Fla., the 11th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 26th day of April, in [SEAL.] the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

(S'd) E. O. LOCKE, *Clerk*,
(S'd) By J. OTTO, *D'y Clerk*.

Endorsed: Received the within writ of attachment April 26th, 1898, and duly executed the same as within commanded by attaching and taking into custody the Spanish steamer Panama. (S'd) John F. Horr, U. S. marshal, so. dist. of Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

3 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

Whereas, on the 26th day of April, A. D. 1898, the United States of America, by its proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court *their* libel against the Spanish steamer Panama in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. Mangrove on April 25th, 1898, as a prize of war.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said Spanish steamer Panama; that monition may issue citing all parties having or claiming any interest or property in said steamer Panama to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said

prize for services in said cause, and that the said steamer Panama may be condemned and sold to pay said prize money with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Wednesday, the 11th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said steamer Panama to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Wednesday, the 11th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why it should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two such other copies in the most public places of Key West & publishing a copy in the Key West Advertiser once a week for two weeks.

And how you shall executed this precept make known to this court by a return hereof on or before the 11th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 26th day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninty-eight, and of the Independence of the United States the hundred and twenty-second.

(S'd) E. O. LOCKE, *Clerk*,
(S'd) By J. OTTO, *D'y Clerk*.

A true copy.
Attest: —— ——.

Endorsed: Received the within writ of monition April 26th, 1898, and duly executed as within commanded by reading the original to the master of the Spanish steamer Panama and posting two copies. (S'd) John F. Horr, U. S. marshal, so. dist. of Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 26th, 1898. (S'd) E. O. Locke, clerk.

4 At a stated term of the district court of the United States for the southern district of Florida, held in the United States court-rooms, at Key West, on the — day of May, 1898.

Present: Hon. James W. Locke, district *court*.

THE UNITED STATES
*against*
THE STEAMSHIP PANAMA AND HER CARGO.

And now Manuel Quevedo, master and lawful bailee of the steamship Panama, intervening as bailee for the interest of the Compania Transatlantica in the said steamship Panama, her engines, boilers, tackel, apparel, furniture, and equipment, appears before this honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamship, her cargo, &c., as a prize of war; and the said Manuel Quevedo avers that before and at the time of the alleged capture of said steamship, her cargo, &c., the above-named Compania Transatlantica, a Spanish corporation of Barcelona, Spain, was the true and *bona fide* owner of the said vessel, her engines, boiler, tackel, apparel, and furniture; that no other person was the owner thereof, and that he was in possession thereof as lawful bailee for the said owner, and that the vessel if restored will belong to the said company, and he denies that she was lawful prize.

Wherefore the said Manuel Quevedo, for and in behalf of the said Compania Transatlantica, for whom he is duly authorized to make this claim, prays to be admitted to defend accordingly, and to show cause, pursuant to the terms of the monition issued herein and served upon the said steamship and upon the master thereof as bailee, why the said steamship, her engines, &c., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored with damages and costs.

(S'd) M'L QUEVEDO.

Sworn to before me this 18th day of May, 1898.
(S'd) JULIUS OTTO, *D'y Clerk.*

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
*Proctors for Claimants.*

Endorsed: Filed May 18th, 1898. (S'd) E. O. Locke, clerk.

(*Test Affidavit.*)

U. S. District Court, Southern District of Florida.

THE UNITED STATES
*against*
THE STEAMSHIP PANAMA AND HER CARGO. } Test Affidavit.

6 SOUTHERN DISTRICT OF FLORIDA, *ss:*

MANUEL QUEVEDO, being duly sworn, deposes and says as follows:

1st. I am the claimant herein and have verified the claim on knowledge derived from my position as master of this vessel and of two others belonging to the same company and from my official communications with the Compania Transatlantica, of Barcelona, Spain, and its various agents and representatives. The claim herein cannot be verified by the company or any of its officers, because all are absent from the United States, and the company has no agent within this district.

2nd. The Panama is a Spanish merchant vessel, which for a number of years has been carrying cargoes, passengers, and the mails between ports of the United States, Cuba, Mexico, and South America. In the ordinary course of her business as a common carrier she sailed from the port of New York on the 20th day of April, 1898, having been consigned there to Juan M. Ceballos, a native-born American citizen trading under the firm style of J. M. Ceballos & Co., under whose agencey the steamer was laden and dispatched. The steamer conformed there in all things to the laws and regulations of the United States and of said port, and was duly cleared from the custom-house with a miscellaneous cargo and 29 passengers for a voyage to Havana, in the island of Cuba, and to ports in Mexico. I did not know any of the passengers nor their business prior to their taking passage.

3rd. The mounted guns and the small arms which she carried had not been shipped in expectation of hostilities between the government of Spain and the United States nor for the purpose of war, but were there pursuant to the terms of a contract between
7 the company & Spanish government for a marine mail service (passed Nov. 18th, 1886, and still in force). The 26th art. of the said contract, which applies to this and to other steamers of the company, provides:

"Art. 26. Every ship shall carry for her own defense the following armament: (2) two guns, Hontoria's system 9 c/m caliber, with powder and ammunition for 30 shots per gun; (20) twenty Remington guns or carbines, with 100 shots each, with baion-ette or sword, and (20) twenty marine swords."

The two Hontoria guns had been mounted for more than three years, but were not fitted for action at the time of the vessel's seizure. The breeches of the guns at that time were detached and were below, where they remained until removed from the ship by the

order of the U. S. marshal in Key West harbor. The steamer was not actually provided with the full amount of ammunition called for by the contract, as above quoted. The Remington rifles, shipped many years ago, were not of modern pattern. The twelve Mauser rifles of smaller bore and the Maxim gun were shipped more than a year ago to maintain the equipment for the defense of the vessel and the mails according to the true intent of the contract.

4th. It appeared from the Panama's papers at the time of her capture, and was a fact, that her cargo had been taken on board prior to May 21st, 1898. She did not have on board, so far as I then knew or was informed or now know or am informed, any officer in the military or naval service of Spain, all of the passengers who were on the vessel having been received on board in the ordinary course. The vessel, as I am informed and believe, is not
8 otherwise excluded from the benefits or privileges of the President's proclamation of April 26th, 1898.

5th. At all times prior to the ship's seizure, on or about April 25th, 1898, I and my officers were in ignorance of the existence of a state of war between the government of Spain and the United States and of any blockade of the port of Havana.

6th. While on said voyage and in due prosecution thereof, at about 5.50 p. m. of April 25th, 1898, said steamer Panama, being then about 25 miles N. 50″ E. from the Morro at Havana, was seized and wrongfully captured by the United States ship of war Mangrove, under the command of a line officer of the United States Navy, and by means of a prize crew then and there placed on board was forcibly brought with her said cargo to the port of Key West. On being stopped by said United States ship of war Mangrove, and being informed of the existance of war and of blockade of the port of Havana, the master and officers of the Panama submitted without resistance to seizure and to the placing of a prize crew on board of said vessel, proceeding therewith, under her own steam, into the port of Key West as directed.

7th. I am informed and believe that by the existing policy of the Government of the United States, as evidenced by repeated declarations of its Executive and by the proclamation of the President of the United States issued and published April 26th, 1898, as well as upon principals in harmony with the present views of nations and sanctioned by recent practice, in acco-dance with which the President has directed that the war should be conducted, the steamship Panama, at the time and place and the circumstances under which she was seized, was not liable to be treated as enemy's prop-
9 erty, but, on the contrary, having sailed from a port in the United States prior to the 21st of May, 1898, was exempt from capture as a prize of war.

8th. Since my examination *in preparatorio*, wherein I was questioned about the insurance on the vessel, I have been informed by a cable sent to J. Bertschmann, Swiss consul at New York, by the secretary of the Associated Board of Underwriters in Paris, and state the fact to be, that the Panama is insured against war risks, including capture, for her full actual value, in the following 29 in-

surance companies, of which 13 are French companies, viz: The Fonciere, the General, the Union Maritime, the Sphire, the Armorique, the Commercial, the Central, the Triton, the Pilote, the Virgie, the Nereide, the Simon, the Loise; 9 are English companies, viz., the Ocean Marine, the Thames & Mersey, the Alliance, the Reliance Marine, the World, the Marine Underwriters, the London, & Provincial; 2 are German companies, viz., the Allemands, the Frankfortaise; two are Austrian companies, viz., the Phœnix, the Franco-Hongroise; two are Swiss companies, viz., the Fedocale, the Fortuna; and one is an Italian company, viz., the Savoia. On information and belief I say that if the Panama be condemned as prize of war in this cause the loss will fall on the foresaid companies, all of which are associations or corporations under the laws of neutral States, and that I am authorized by the said companies to represent these facts to the court.

(S'd) M'L QUEVERO.

Sworn to before me this 18th day of May, 1898.

(S'd) J. OTTO, *D'y Clerk.*

(Endorsed:) Filed May 18th, 1898. (S'd) E. O. Locke, clerk.

10 District Court of the United States for the Southern District of New York.

UNITED STATES OF AMERICA *against* THE STEAMSHIP PANAMA AND HER CARGO. } Supplementary Test Affidavit.

COUNTY OF MONROE, *State of Florida, Southern District of Florida,* } ss:

Manuel Quevedo, being duly sworn, says that he is the master of the Panama, has been examined *in preparatorio* herein, and verified the claim and test affidavit.

Deponent further says that at the time of his examination *in preparatorio* he produced before the commissioners a printed pamphlet embodying an extract from the mail contract between Compania Transatlantica and the Spanish government, passed the 18th day of November, 1896; that said extract was incomplete, in that it did not contain, amongst others, article 64 of the contract, which provides the terms upon which the government is entitled under it to take possession of the vessels in case of war. This article provides that in case of the suspension of the mail service by war the State can take possession of the vessels of the company, with their furniture and equipment, on the basis of the valuation by a commission composed of two persons selected by the gove-nor making the impressment and two by the contracting company, the four thus selected to choose the fifth. At the termination of the war it is provided that vessels so taken shall be returned to the
11 contracting company, with their furniture and ordinary equipment, at the valuation fixed by the commission, with

an indemnity for damage, and that the government shall pay the company during the time that it holds possession of the vessels a rental of five per cent. on the valuation fixed by the commission.

Deponent further asks leave to submit the whole of the said contract to the court, it being contained in a printed book filed herewith, marked Exhibit "A," endorsed "Derecho Maritimo Compania Transatlantica," at pages 221 to 251, inclusive. This book, Derecho Maritimo, was in the chart-room of the Panama, to which the prize master had access when on board. He further says that on April 28th the officers of the court were on board and examined the ship's papers, taking such as they wanted, leaving this book in its place.

Deponent further says that up to the time of her capture the Spanish government had not taken possession of the Panama under under the terms of said contract, and that — the said vessel, nor was there any naval officer or naval men on board at that time.

(S'd) M'L QUEVEDO.

Sworn to before me this 24th day of May, 1898.

(S'd) J. OTTO, *D'y Clerk.*

(Endorsed :) Filed May 24th, 1898. (S'd) E. O. Locke, clerk.

12 (*Order Refusing Leave to Take Further Proof.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
*against*
THE STEAMER PANAMA AND HER CARGO. } Prize.

And now comes Manuel Quevedo, master, claimant of the Panama herein, and upon his test affidavit and supplementary test affidavit and upon all the other proceedings in the cause asks leave to take further and additional proofs respecting the matters set forth in the said test affidavit and supplementary test affidavit.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
*Proctors for Claimant.*

Key West, Fla., May 27th, 1898.

Upon consideration the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd) JAMES W. LOCKE,
*U. S. District Judge.*

(Endorsed :) Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

13 (*Decree.*)

In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES
*against*
STEAMER PANAMA AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken *in preparatorio*, and all due proceedings having been had and claims to the vessel and cargo filed, and it appearing to the court that the said steamer Panama is enemy's property and was upon the high seas at the time of the President's proclamation exempting certain vessels from arrest, it is hereby ordered, adjudged, and decreed that the said steamer Panama be condemned and forfeited to the United States as lawful prize of war, and that the marshal proceed to advertise and sell said vessel, after due and proper notice, at public auction, in accordance with the law, and that the proceeds be deposited with the assistant treasurer of the United States at New York.

In the matter of the claim to certain items of cargo of said steamer Panama by J. B. Carberry & Co., it appearing that said goods belonged to and were the property of American citizens of New York, and that the title had not passed to enemies of the United States, it is ordered, adjudged, and decreed that the said claim be allowed and the said goods, consisting of 2,798 bags
14 of corn and 200 bags of bran, be restored and delivered to the claimants, or if any of the same have been sold under any order of this court the proceeds be so restored and delivered.

In the matter of the claim of Samuel Hermanes for certain property of the cargo of said steamer Panama, it appearing that the said property was shipped by said claimant, a British citizen and resident of New York, and that the shipments were made to certain merchants, citizens and residents of Mexico, and were not the property of enemies of the United States, it is ordered that said shipments, consisting of shoes, watches, and lumber, be restored and delivered to the claimants thereof.

In the matter of the claim of Josephine W. Wupperman, an American citizen of New York, it appearing that said cargo was shipped by said claimant as such citizen of New York to various parties, citizens of Mexico and neutrals, that the property was the property of said American citizen or said neutrals, it is ordered that the said claims be allowed and said property so shipped by said claimant be restored and delivered to said claimant.

In the matter of the claim of Alfred M. Seixas, an American citizen of New York, it appearing that the property herein claimed, although shipped upon the order of alien enemies of the United States, was shipped to the agent of said Sexias, and was not to be delivered until payment was made, and that no title passed from the American shipper, but was retained by him, it is therefore or-

dered that said property so claimed by him be restored and delivered to the claimant.

In the matter of the claim of Mosle Bros., American citizens, although it is alleged that claimants retained their title to
15 the property, it appears from the evidence of the bills of lading that the shipments were made to order and the bill of lading, duly endorsed, was forwarded to merchants of Nuevitas, Cuba. This appears to be a case in which further proof may be allowed, and it is so ordered.

In the matter of the claim of Anthony R. Maicas for certain boxes of bran and packages of hardware consigned to parties whose citizenship is unknown, it is ordered that claimants have permission to introduce further proof in regard to the title to the property so claimed.

In the matter of the claim of R. Fabien, it not satisfactorily appearing in whom title to the property embodied in this claim is, it is ordered that the claimant have leave to introduce further proof.

In the matter of the claim of J. & M. Menendez, naturalized citizens of New York, it being alleged in the test affidavit under such claim that the property was shipped to certain parties in the port of Havana, but the title was not to pass to consignee until same was paid for, but the testimony on said point being unsatisfactory, it is ordered that claimant be permitted to introduce further proof in support of said allegation.

In the matter of the claim of Joaquin A. Modina and Jose P. del Castillo, comprising the firm of J. Modina & Co., of New York, citizens of the United States, although the test affidavit claims that the goods were still the property of the claimant, yet the bill of lading shows them consigned to Toman, Hoar & Co., of Nuevitas,
Cuba, and to be without any restricting clause or limit to
16 passage of title. Proof being unsatisfactory, the claimants are permitted to file further proofs to establish their ownership.

And it further appearing that there were certain portions of said cargo shipped from Carlos Booth & Co., of New York, and George W. Mitchell, of New York, to certain parties in Mexico, presumptively Mexican citizens and neutrals, and there being nothing to show that said property, the same being shipped from an American port to a neutral port, was enemy'- property, it is ordered the owner have sixty days to file a claim herein and introduce proof in support thereof.

And it is further ordered that all the cargo of said vessel unclaimed and not provided for in this decree is condemned and forfeited and ordered to be sold and the proceeds deposited with the assistant treasurer at New York, in accordance with law, and in event any of the property herein ordered to be restored has been sold the claims allowed be good as against the proceeds thereof.

It is further ordered that the several parties herein, claimants,

who are permitted to file further proofs of ownership, have sixty days to file same.

(S'd) JAMES W. LOCKE, *Judge.*

Key West, Fla., May 27th, 1898.

(Endorsed :) Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

17 (*Prayer for Appeal.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Libellant, Appellees,
*against*
THE STEAMSHIP PANAMA; MANUEL QUEVEDO, Claimant, Appellant. } Prize.

And now comes Manuel Quevedo, claimant, considering himself ag-reived by the decision and decree of condemnation herein, and alleging error in the said decree appears in open court and appeals therefrom to the Supreme Court of the United States : he presents herewith an assignment of errors complained of and a bond for costs, with surety in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record and all proceedings may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that the said appeal may be heard and determined by the said court.

Key West, Fla., May 28th, 1898.

(S'd) M'L QUEVEDO.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
*Proctors for Appellant.*

(*Order Granting Appeal.*)

18 Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond on appeal, the appeal of the claimant, Manuel Quevedo, is hereby allowed.

(S'd) JAMES W. LOCKE,
*U. S. District Judge.*

Key West, Fla., May 28th, 1898.

(Endorsed :) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Assignment of Errors.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Appellees,
*vs.*
THE PANAMA, Appellant.

The claimant and appellant assigns error to the final decision and decree of the district court as follows :

1st. For that the court held and decided that the Panama was lawful prize of war.

2d. For that the court omitted and refused to hold that the Panama was not lawful prize of war.

3d. For that the court omitted and refused to find that the Panama was privileged and exempt from capture and condemnation as prize under and by virtue of the President's proclamation issued April 26th, 1888.

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4th. For that the court omitted and refused to find that the Panama was exempt from capture and condemnation by reason of the fact that her cargo had been taken on board in and she had sailed from a port of the United States prior to May 21st, 1898.

5th. For that the court omitted and refused to hold that the vessel was privileged and exempt from condemnation by reason of *of* the fact that she was in a port or place of the United States on April 26th, 1898, and was not within the classes of vessels excepted from the privileges accorded by the fourth article of the proclamation.

6th. For that the court omitted and refused to allow further proofs of the matters set up in the test affidavit and supplementaty test affidavit.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
*Proctors for Appellant.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Bond.*)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA
*against*
THE PANAMA.

20

Know all men by these presents that we, Manuel Quevedo, principal, and The American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in the cause of prize pending therein, wherein The United States is libellant against the steamship Panama and her cargo and the said Manuel Quevedo is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having fil*ing* his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now the conditions of the above obligation is such that if the said Manuel Quevedo shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd) M'L QUEVEDO.
(S'd) THE AMERICAN SURETY COMPANY OF NEW YORK,
By GEO. W. ALLEN, *Att'y-in-fact.*

Taken and acknowledged before—
(S'd) JULIUS OTTO,
*U. S. Commissioner.*

May 28th, 1898.

Approved:
(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

21 (*Application for Guns, &c.*)

NAVAL BASE, U. S. FLAGSHIP SUWANEE.
KEY WEST, FLA., *May 28th*, 1898.

SIR: 1st. I request that you will allow Lieutenant C. W. Jungen, U. S. N., to take the two 14-pounder guns, with the ammunition, and Lieutenant John Hood, U. S. N., the Maxim gun and ammunition, from the S. S. Panama.

2d. I have appointed officers to appraise these guns and the ammunition.

Very respectfully,
(S'd) GEO. C. REMEY,
*Commodore Commanding.*

J. W. Locke, Esq., judge U. S. district court.

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Recommendation of Prize Commissioners.*)

In the District Court of the United States, Southern District of Florida. In Admiralty.

To the Hon. James W. Locke, judge of said court:

The undersigned, prize commissioners of this honorable court, would respectfully show unto your honor that—

Agreeably to the request of Com. George C. Remey, U. S. N., commanding naval base, we recommend that all the mounted
22 guns of the prize steamer Panama and ammunition for the same be turned over to such officer as he may designate, for

the use of the United States Navy Department, as provided by sec. #4624, U. S. R. S.

(S'd) J. OTTO,
(S'd) J. M. PHIPPS,
(S'd) J. K. WINN, *U. S. N.*,
*Prize Commissioners.*

Upon reading the foregoing application from George C. Remey, commodore commanding, and the recommendation of the prize commissioners, it is ordered that all the mounted guns and ammunition for the same which belong to the prize steamer Panama be duly appraised and delivered to the said George C. Remey, U. S. N., commodore commanding, for the use of the Navy Department, and that N. R. Usher, U. S. N., and J. D. Blich, U. S. N., be, and that they are hereby, appointed to appraise said property and report without delay.

Key West, Fla., May 28th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Order to Take the S. S. Panama and Cargo to New York for Sale.*)

23 District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE SPANISH STEAMSHIP PANAMA & CARGO. } Prize.

Whereas said case has been fully heard and a decree of condemnation and forfeiture has been made and entered against said steamship and a portion of said cargo;

And whereas the said steamship and cargo cannot be satisfactorily sold in this port, but the interests of all parties demand that she should be taken to some other district for sale;

And whereas the large number of passengers and crew on board said vessel who cannot be safely or economically disposed of at this place demands that she should be taken as soon as possible;

And whereas the presence here of a large number of other prizes and cargoes which have been condemned and ordered sold requires and demands the presence of the marshal of the district, and it is impracticable in the present emergency to procure the services of a suitable and satisfactory person to act as special deputy to take charge of and superintend the transfer of said steamer to another district:

It is hereby ordered that said steamer Panama be taken and transferred from this district to the district and port of New York for unloading and sale of such cargo as has not been ordered released and restored.

That she proceed to said port in charge of a prize crew from the

U. S. S. S. Cincinnati and under convoy of such ship, in com-
24 mand of Commander Colby M. Chester, U. S. N., command-
ing such charge and convoy, being ordered and directed by favor of Commodore George C. Remey, commodore commanding station.

And it is further ordered that Commander J. K. Winn, U. S. N., retired, prize commissioner of this district, be appointed and authorized in behalf of the captors and all parties in interest to proceed without delay to the port of New York via Washington; that he shall endeavor at Washington to make all arrangements with the proper departments of the Government for the receipt and disposal of all persons on said steamship immediately upon her arrival at the port of New York, and upon his arrival at New York superintend and supervise all arrangements for the consignment of said vessel and cargo to the auctioneer appointed by the honorable Secretary of the Navy to make and supervise the sales of prize property at the port of New York, and that he shall arrange, superintend, and supervise, by and with the assistance of said auctioneer, all such matters and things as shall in all and any way protect the interests of the captors and all others.

And it is further ordered that all necessary personal expenses so incurred by said Prize Commissioner Winn, when satisfactorily proven and allowed by this court, shall be taxed against and paid from the proceeds of said property in the final decree of distribution.

Key West, Fla., May 30th, 1898.

(S'd) JAMES W. LOCKE,
*U. S. District Judge.*

So much of the foregoing order as relates to the performance of
the duties of the U. S. marshal by Prize Commissioner Winn
25 and the reason therefor is approved and certified to be correct, and said prize commissioner, J. K. Winn, is hereby authorized and empowered by me to perform all the duties of marshal in said matters, namely, care, custody, and protection of said prize property, as fully as if he were appo-nted as special deputy for that purpose.

Key West, Fla., May 30th, 1898.

(S'd) JOHN F. HORR,
*U. S. Marshal, Southern District of Florida.*

(Endorsed:) Filed May 30th, 1898. (S'd) E. O. Locke, clerk.

(*Decree Restoring Cargo to Carlos Booth & Co.*)

District Court of the United States, Southern District of Florida.

THE UNITED STATES
*vs.*
THE STEAMSHIP PANAMA. } Prize.

In the matter of the claim of Carlos Booth & Co. for certain property shipped by said steamer Panama from New York for certain

parties in the city of Mexico, to be taken by said steamship to the port of Vera Cruz, it appearing from the further proof that said property is neutral property and not subject to condemnation and forfeiture, it is ordered that all such property as is described in said claim be declared neutral property and the same be restored and delivered to claimants.

26 Jacksonville, Fla., June 9th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed June 9th, 1898. (S'd) E. O. Locke, clerk.

(*Order Extending Time to File Record.*)

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA
*vs.*
THE STEAMER PANAMA AND HER CARGO. } Prize.

This court having heretofore entered a final decree in the above-entitled cause condemning the said steamer and certain of her cargo, it is now, upon the underwritten consent of the United States attorney for the southern district of Florida and motion of J. Parker Kirlin, proctor for the claimant of said steamer and claimants of her cargo, ordered that the time of the claimants of the said steamer and her cargo to file a record on appeal herein and to perfect their said appeals be, and hereby is, extended for thirty days from June 25th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd) J. N. STRIPLING,
*U. S. Attorney.*

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

27 District Court of the United States, Southern District of Florida.

THE UNITED STATES OF AMERICA
*against*
THE STEAMER PANAMA AND HER CARGO. }

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wilhelmus Mynderse, proctor for the claimants of said steamer and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be, and hereby is, extended to Sept. 1st, — days from ——, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd) J. N. STRIPLING,
*U. S. Attorney.*

28 *Standing Interrogatories*

Established by the district court of the United States for the southern district of Florida to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio.*

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ships in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her

lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time, or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief that they

have such interest? Do you verily believe, that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons, and to none others?

29 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading

of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto, without their having ever, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal?

Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to the captors? If yea, what was their purport, to whom were they written and sent, and what has become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before or at the time of her capture, sailing beyond, or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made, and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners, and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? And by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo concerning which you are now examined at the time of the capture?

31 UNITED STATES OF AMERICA:

In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
SPANISH STEAMER PANAMA. } Prize.

Deposition of Ramon Burgas, a witness produced, sworn, and examined *in preparatorio* on the 11th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the 1st interrogatory deponent answers:

My name is Ramon Burgas. I was born in Barcelona, Spain, and have lived there for the last seven years. I have lived there all my life. I am a subject of Spain. I am not a married man.

2. To the 2nd interrogatory deponent answers:

I was in my office on board the ship when she was captured. She has a commission as a royal mail ship from the Spanish government.

3. To the 3rd interrogatory deponent answers:

32 I do not know where the ship was when she was captured. We were captured on a pretense of the war which existed between Spain and the United States.

She sailed under the Spanish flag, and was brought into the port of Key West. We had no other colors on board.

There was no resistance. We were captured by the U. S. S. "Mangrove." She was a ship of war. At the time of the capture there were two war ships in distance.

I could not see the body of the ships, but could see their towers. Afterwards we steamed up to the war ships with the Mangrove and found that the ships were the Indiana and the Wilmington.

4. To the 4th interrogatory deponent answers:

The master of the captured ship is Manuel Quevedo. I have known him since December, 1897. I do not know who appointed him, for when I entered the ship he was already there as captain. I do not know where or when he took possession of the ship or who delivered the possession to him.

The master lives in Cadiz, which is his fixed place of abode. I do not know how long he has lived there or where he was born, but I believe he is from the Canary islands, and that he is a subject of Spain. He is married. His family lives in Cadiz.

5. To the 5th interrogatory deponent answers:

The vessel is 1,432 registered tons. She had 71 mariners,
33 including the captain, who are all Spanish. They all came on board at Havana, Cuba. They were shipped by the agents of the company at Havana at different times.

6. To the 6th interrogatory deponent answers:

Neither myself nor any of the officers or the mariners had any interest in the vessel or the cargo. I belonged to the vessel in the capacity of supercargo at the time she was captured. I have known the ship for about four years. I first saw her in Havana. She was built in England.

7. To the 7th interrogatory deponent answers:

The name of the vessel is the Panama. She has been called the "Panama" ever since I knew her. She had no passport or sea chart that I know of. On the voyage before we were captured the vessel sailed from Havana to New York. The last voyage began in Havana and was to have ended in Vera Cruz, round trip by the way of New York. The vessel last sailed from New York on the 20th day of April, A. D. 1898, at 1.30 p. m. On our last voyage we started from Havana for New York. After leaving New York for Havana we were captured.

8. To the 8th interrogatory deponent answers:

At the time of first setting sail we had on board a cargo of sugar and tobacco and old metal. When we were captured we had on board a cargo—general—which was taken on at New York.
34 This cargo was taken on board from the 18th to the 20th of April, 1898. The manifest will set forth the quantity of each sort; I do not now remember. The original cargo was unladen at New York. No part of the cargo has been unladen, since the commencement of the voyage, taken on at New York. A portion was taken out by the U. S. marshal, under orders from the court. Potatoes, eggs, and lard were taken out to be sold as perishable cargo.

9. To the 9th interrogatory deponent answers:

The owners at the time of the capture were the Spanish Trans Atlantic Company. I know they were the owners because I have received no notice to the contrary and all the orders are from them. They are Spaniards; they reside at Barcelona; they are subjects of Spain. I do not know how long they have been in pos-ession or from whom they purchased.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale.

11. To the 11th interrogatory deponent answers:

The lading was placed on board at one time at the port of New York.

12. To the 12th interrogatory deponent answers:

I do not know the laders or consignees. The goods were to
35 be delivered at Havana, Progresso, and Vera Cruz, at the risk of the shippers. I believe that if the said cargo had been delivered at the port of destination that the said cargo would have belonged to the same persons and to none others.

13. To the 13th interrogatory deponent answers:

I do not know how many bills of lading were signed for these goods; none of them were false.

14. To the 14th interrogatory deponent answers:

At the agents' at New York I believe that there are copies of all bills of lading relative to the cargo.

15. To the 15th interrogatory deponent answers:

There was no charter-party.

16. To the 16th interrogatory deponent answers:

All the papers of every description that were on the ship were delivered to the prize master at the time we were captured. None of them were burnt, torn, thrown overboard, cancelled, or concealed.

17. To the 17th interrogatory deponent answers;

The ship has never before been captured and condemned as a prize before this time.

18. To the 18th interrogatory deponent answers:

I have sustained no loss by the taking and capture of this ship.

36 I have not received any promise of indemnity or indemnity for any loss which I have sustained or may sustain.

19. To the 19th interrogatory deponent answers:

I do not know whether or not the said ship or cargo is insured.

20. To the 20th interrogatory deponent answers:

I believe that the cargo would upon its having been unladen at its port of destination *would* have become the property of the consignees and *to* none others.

21. To the 21st interrogatory deponent answers:

The cargo was produced and grown in the United States.

22. To the 22nd interrogatory deponent answers:

All of the cargo was taken from the wharf at the port of New York.

23. To the 23rd interrogatory deponent answers:

Bills of lading I believe to be in the U. S., copies of the original found on board the ship. They do not differ from those found on board the ship.

24. To the 24th interrogatory deponent answers:

The only papers delivered out of the ship were delivered to the prize officer. I believe they are now in possession of the prize commission.

37 25. To the 25th interrogatory deponent answers:

The bulk of the cargo was not broken before the capture, but it has been broken in the port of Key West by the U. S. marshal.

26. To the 26th interrogatory deponent answers:

There were passengers on board. There were no passengers secreted. I do not know them by name. They are Spaniards. I do not know their rank, profession, or occupation. I do not know if any of them had a commission. They were taken on board at New York. Twenty-eight were for Havana and one for Vera Cruz. None of the passengers were concerned in the ship. There were no

officers, mariners, or soldiers secreted on board. There were no citizens of the United States on board.

27. To the 27th interrogatory deponent answers:

All the papers found on the boat, as far as I know, are true and correct. I know of no matter or thing which would affect their credit. The papers were obtained for this ship alone. The ship had only a license from the custom-house at New York and the Spanish papers.

28. To the 28th interrogatory deponent answers:

I have written no letters or papers since I was captured.

29. To the 29th interrogatory deponent answers:

The ship was steering her course towards Havana when
38 she was captured. Her course was not altered upon the appearance of the capturing ship. Her course was always directed toward Havana. She was not sailing wide or beyond her port of destination. Her course was altered after capture and she was brought into the port of Key West, where she now is. We were 25 miles from Havana when we were captured.

30. To the 30th interrogatory deponent answers:

I know nothing about any sales or transfers of this ship. I believe that if the ship should be restored she will belong to the persons now asserted to be the owners and to none others.

31. To the 31st interrogatory deponent answers:

Two breech-loading 9 centimeters Hontorio guns, one Maxim rapid-fire gun, and two saluting guns were mounted on deck; revolvers, guns, swords, and ammunition for the same; sixty rounds of ammunition for the cannon. She was armed in accordance with the contract with the Spanish government. All mail ships must be armed.

32. To the 32nd interrogatory deponent answers:

I have already stated in my answers in the foregoing all that I know or believe concerning the true property and destination of the ship and cargo.

(S'd) RAMON BURGAS.

Sworn to and subscribed before me May 11th, 1898.

(S'd) J. K. WINN,
*Prize Commissioner.*

39 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
THE SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of Gaspar Thompson, a witness produced, sworn, and examined *in preparatorio* on the 12th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Panama.

1. To the 1st interrogatory deponent answers:
My name is Gaspar Thompson. I was born at Cadiz, Spain. For the last seven years I have been going to sea. I claim Cadiz as my home. Since 1895 I have been a Spanish subject. Previous to that I was a subject of England. I am not married.

2. To the 2nd interrogatory deponent answers:
I was present at the time of the capture of the Panama. The ship is a regular Spanish mail steamer.

3. To the 3rd interrogatory deponent answers:
40 The ship was taken about twenty miles from Havana, Cuba, at about 15 minutes to 6 o'clock p. m. on the 25th day of April, A. D. 1898. We were captured on account of the war which existed between Spain and the United States. She was carried into the port of Key West. She flew the Spanish flag. I do not know that we had any other colors. We made no resistance at the time. We were captured by the U. S. S. Mangrove. The ship that captured us was a ship of war. I believe the U. S. S. "Indiana" and another ship were in sight. I was chief engineer of the "Panama," and my duties demanded my presence below, so I am not prepared to state positively as to the time we sighted the other ships.

4. To the 4th interrogatory deponent answers:
The captain's name id Manuel Quevedo. I have known him for 13 years, and he was appointed to the command of the "Panama" by the Spanish Trans Atlantic Company. She was delivered to the captain in Havana about 18 months ago by Capt. Angel Cascaro. The captain of the ship lives in Cadiz. His fixed place of residence is Cadiz, and he usually resides on board his boat. I do not know how long he has lived at Cadiz, but he was born in the Canary islands and is a subject of Spain. He is a married man. His wife and family live in Cadiz.

5. To the 5th interrogatory deponent answers:
I do not know the tonnage of the vessel. The ship has
41 all told seventy-one mariners, all Spaniards. They all came on board at Havana at different times. The agent of the company at Havana hired the mariners, except the officers.

6. To the 6th interrogatory deponent answers:

None of the officers or mariners had any interest in the vessel or cargo. I belonged to the "Panama" at the time she was taken in the capacity of chief engineer. I have know- the vessel for 18 years. I first saw her in Santandere, in 1882. She was built in Glasgow.

7. To the 7th interrogatory deponent answers:

The name of the vessel is the Panama. She has been called by that name ever since I knew her. I do not know if she has a passport or sea chart. We started out from New York on the voyage before we were taken and intended to touch at Havana, Vera Cruz, and Progresso, thence back to New York, touching at the same ports. We were captured on our way out of New York. We cleared from New York at about 2 p. m. on the 2–th day of April, 1898. We were captured on the 25th day of April, 1898, while we were bound for Havana.

8. To the 8th interrogatory deponent answers:

I am chief engineer of the boat and do not keep account of the cargo. I do not know what she was loaded with. Some of the cargo was unloaded at Key West. I do not know the articles which were unladen.

42 9. To the 9th interrogatory deponent answers:

The Spanish Trans Atlantic Company, represented by the Marquis Comillas. I am employed by them and have no notice to the contrary that they do not own the vessel. They are all Spanish subjects, to the best of my knowledge. I cannot tell where they all live or where their families live. They are subjects of the King of Spain. The present owners have been in possession of said vessel since the year 1886. They purchased the said vessel from the Marquis of Campos Company.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale or transfers except as before stated.

11. To the 11th interrogatory deponent answers:

The cargo was put on board at one port at one time, at New York.

12. To the 12th interrogatory deponent answers:

I do not know anything about the laders or consignees. I do not know their names or their place of abode or their nationality.

13. To the 13th interrogatory deponent answers:

I do not know anything about any bills of lading.

14. To the 14th interrogatory deponent answers:

I do not know anything about any bills of lading.

43 15. To the 15th interrogatory deponent answers:

I do not know anything about a charter-party being signed for that voyage.

16. To the 16th interrogatory deponent answers:

I do not know what papers, letters, or writings were on board the ship at the time we set sail. I do not know, of my own knowledge or otherwise, that any of them were destroyed, burnt, or concealed.

17. To the 17th interrogatory deponent answers:

Previous to this seizure, the ship has never been seized or condemned as a prize.

18. To the 18th interrogatory deponent answers:

If the ship is not returned, I will lose my wages and my situation. I have not received any indemnity or promise of indemnity for any loss which I have sustained or may sustain by reason of the capture of this ship.

19. To the 19th interrogatory deponent answers:

I do not know whether or not the cargo is insured, but the ship is insured in Lloyds.

20. To the 20th interrogatory deponent answers:

I do not know anything about the ownership of the cargo.

21. To the 21st interrogatory deponent answers:

44 I do not know where the cargo was produced or where it was grown, but I believe they came from the United States.

22. To the 22nd interrogatory deponent answers:

The cargo was taken from the wharf in New York about the 18th day of April to the 20th day of April, 1898.

23. To the 23rd interrogatory deponent answers:

I do not know anything about any bills of lading or passports relative to the cargo and ship.

24. To the 24th interrogatory deponent answers:

After the capture of the ship some papers were turned over to the prize master by the captain. I believe they are now in pos-ession of the prize commissioners.

25. To the 25th interrogatory deponent answers:

None of the cargo was taken out on the voyage, but since we arrived in Key West some of the cargo was taken out by the U. S. marshal within the last week.

26. To the 26th interrogatory deponent answers:

There were passengers on the ship. None of them were secreted at the time of capture. I do not know their names. They are all Spaniards except two; one is a Frenchman and one is a Mexican. I do not know their profession or occupation. I do not know if any have a commission. They were taken on board at New York on the 20th day of April, 1898. They were going to Havana and Vera Cruz; business unknown to me.

45 None of the passengers had any authority over the ship or cargo, as far as I know of. There were not any officers, soldiers, or mariners on board the ship, as far as I know. There were no citizens of the United States on board or secreted or confined, as far as I know.

27. To the 27th interrogatory deponent answers:

I do not know anything about any of the papers of or concerning the ship and cargo.

28. To the 28th interrogatory deponent answers:

I have not written any letters or signed any papers relative to the ship or her cargo.

29. To the 29th interrogatory deponent answers:

The ship was steering towards the port of Havana at the time she was pursued and taken. I do not think the course was changed

at the appearance of the capturing ship. Her course, as far as I know, was at all times directed toward the port, as shown by the ship's papers. She was not at any time sailed beyond or wide of her port of destination, as far as I know. After her capture her course was altered, and she was brought into the port of Key West by the Mangrove.

30. To the 30th interrogatory deponent answers:

I do not know anything about any bill of sale or transfer of the ship, except as before stated. If the ship were released, I
46 believe she would belong to the persons now said to be the owners.

31. To the 31st interrogatory deponent answers:

There were two breech-loading Hontorio 9 centimeters guns and one Maxim rapid-firing gun; a number of rifles, cutlases, revolvers, and ammunition for the same. I do not know the exact number or the exact amount of ammunition. I think 38 or 40 charges for the big guns. This armament is required by the Spanish law for all mail steamers. I do not know if there were any other arms or ammunition on board.

32. To the 32nd interrogatory deponent answers:

I have already stated all that I know concerning the true property and destination of the ship and cargo concerning which I am now being examined.

(S'd) GASPAR THOMPSON.

Sworn to and subscribed before me May 12th, 1898.

(S'd) J. K. WINN,
*Prize Commissioner.*

47 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
SPANISH STEAMER "PANAMA." } Prize.

Deposition of Manuel Quevedo, a witness produced, sworn, and examined *in preparatorio* on the 11th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the 1st interrogatory deponent answers:

My name is Manuel Quevedo. I was born in Las Palmas, Canary islands. I have lived during the last seven years in Santander and Cadiz, Spain; four years in Cadiz. I live there now. I am a subject of Alfonso XIII, King of Spain. I am a Spaniard. I am a married man and my family live at Cadiz, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the capture of the Panama. The ship had a commission, a royal patent, from the Spanish government by the Queen of Spain.

48 3. To the 3rd interrogatory deponent answers:

The ship and cargo *was* taken about 25 miles from the Morro castle, Havana, Cuba, north latitude 23 21″, longitude 75 47′. The U. S. Mangrove steered towards us at 5.40 on the 25th of April, 1898; at 5.50 the first shot was fired by the Mangrove. After the first shot I stopped the ship. When the officer came on board he told me that the "Panama" was a prize, because Spain had declared war against the United States. We were carried into the port of Key West. The ship flew the Spanish flag. We made no resistance at the time of the capture. Two shots were fired by the "Mangrove." My ship was captured by the "Mangrove." The ship that captured my vessel I believe to be a war ship. There were two ships in sight at the time we were captured. Afterwards I was informed that one was the "Indiana" and one was the "Wilmington." I first saw the "M-ngrove;" this was at 5.30 p. m., and shortly afterwards I saw the towers of the other ship.

4. To the 4th interrogatory deponent answers:

The name of the master of the captured ship is Manuel Quevedo, myself. The Trans Atlantic Company gave me possession of said ship. I took command of her in Havana, the 28th day of Sept., 1896. The name of the person who delivered possession to me was Manuel Calvo, agent and vice-president of the company. He lives in Havana, Cuba.

49 5. To the 5th interrogatory deponent answers:

The tonnage of the vessel is over 1,300 tons. I do not remember the exact number. We had seventy-one mariners, including myself. They are all Spaniards. They were all shipped at Havana. The company hired them; at different times.

6. To the 6th interrogatory deponent answers:

Neither myself or any of the officers or mariners have any interest in the ship or cargo. I belong on board the vessel in the capacity of master. I have known the vessel about 15 years. I do not know where she was built. She was built in England, I believe.

7. To the 7th interrogatory deponent answers:

The vessel is named the "Panama." She has been called the "Panama" about 15 years. I do not know that she has ever been called by any other name. The ship has a collection of sea charts and a royal patent. The voyage of the ship usually commences at New York and ends at Vera Cruz. Before we were captured we had sailed from Havana to New York. We were on our way from New York to Havana when we were captured. We sailed from New York, which is the last place that we cleared from before we were captured.

8. To the 8th interrogatory deponent answers:

On our trip from Havana to New York on our last voyage we had on board a cargo of sugar and tobacco. On our voyage from

New York to Havana, when we were captured, we had on
50 board a general cargo. The same was put on board between the 18th day of April and 20th day of April, A. D. 1898. We had on board a general cargo. I cannot set forth the quantity of each sort. A part of the cargo was unladen at the port of Key West; nowhere else. A part of the cargo unladen at Key West were lard, eggs, potatoes, and onions.

9. To the 9th interrogatory deponent answers:

At the time the vessel was seized she was owned by the Spanish Trans Atlantic Company. I have no notice to the contrary that they are the owners now and at the time she was captured. If the ownership had been changed I would have been informed of the change. The owners by birth are Spaniards. They reside with their families at Madrid, Barcelona, and Cadiz. I do not know how long they have resided in said places. I do not know where they resided before. They are all subjects of Spain. The present owners of the "P-nama" *has* been in possession about 13 years. They purchased her from the Marquis de Campos.

10. To the 10th interrogatory deponent answers:

I do not know anything about a bills of sale being made for this vessel.

11. To the 11th interrogatory deponent answers:

All of the cargo was put on board at New York—from the dock at New York—between the 18th, 19th, and 20th days of April, A. D. 1898.

51 12. To the 12th interrogatory deponent answers:

I do not know the names of the shippers or consignees of the cargo. The manifest will show it. I do not know what country they belong to. The goods were to be delivered in Havana, Progresso, and Vera Cruz, and I do not know for whose account, risk, or benefit. I do not know who the cargo belongs to or anything about it. I believe that in case the cargo is released, and if the said cargo were to be delivered at the port of destination, that it would belong to the same persons who were the owners when the said cargo was placed on board and to none others.

13. To the 13th interrogatory deponent answers:

There were several bills of lading signed for each article on board the ship, but, as that is the duty of the agent, I do not know how many were signed. I do not think that any of the bills of lading were false.

14. To the 14th interrogatory deponent answers:

I do not know anything about any bills of lading being now in the U. S. of America.

15. To the 15th interrogatory deponent answers:

There was no charter-party for that voyage.

16. To the 16th interrogatory deponent answers:

All the papers on board of the said vessel at the time of
52 her capture were delivered to the prize master. None of the papers of the ship were burnt, torn, thrown overboard, or cancelled or concealed.

17. To the 17th interrogatory deponent answers:

I do not know whether or not the said vessel has ever before been captured and condemned as a *prize*.

18. To the 18th interrogatory deponent answers:

I have sustained no loss by the capture or detention of this vessel. I have received no indemnity, satisfaction, or promise of satisfaction for any loss which I have sustained or may sustain by this capture.

19. To the 19th interrogatory deponent answers:

The ship and cargo were insured. I do not know where they are insured.

20. To the 20th interrogatory deponent answers:

In case I had arrived at the port of destination, as shown by the ship's papers, I believe the cargo would have belonged to the consignees.

21. To the 21st interrogatory deponent answers:

I believe the cargo was produced and manufactured in the United States.

22. To the 22nd interrogatory deponent answers:

All of the cargo was removed from the shore at the docks
53 right on board my vessel, at New York, between the 18th day of April, 1898, and 20th day of April, 1898.

23. To the 23rd interrogatory deponent answers:

I know very little about the bills of lading. A copy of each was delivered on board my boat and I delivered them to the prize master. We sailed from the port of New York on the 20th day of April, at 1.30 p. m.

24. To the 24th interrogatory deponent answers:

All the papers and mail of the ship were delivered to the prize master; none was delivered to any one else.

25. To the 25th interrogatory deponent answers:

None of the cargo was broken during the voyage. A part has been broken by the U. S. marshal, under the order of the court, for the purpose of selling perishable cargo.

26. To the 26th interrogatory deponent answers:

There were passengers on board; none of them were secreted; I do not know what their names were. There were 29 passengers. There is one Frenchman and the balance are Spaniards. I do not know their rank or occupation. I do not know if any of them had commissions. They were taken on board at New York on 20th day of April, 1898. They were destined for Havana; one for Vera Cruz. I do not know what business they were on. None of the passengers had any con-
nection with the ship in manner, nor the cargo. There
54 were no soldiers, officers, mariners secreted on board. Some of the passengers may be soldiers or officers, but I do not know it to be so. There were no citizens of the United States on board or secreted or confined. I had two Spanish mariners belonging to my ship placed in irons previous to my capture. They have since been released by me.

27. To the 27th interrogatory deponent answers:

That to the best of my knowledge and belief all of the passports

and papers on board my ship are true and correct. None of them are false, and I do not know of anything that would affect their credit. The clearance papers were obtained from the collector of customs at New York. They were obtained for this ship only, and were upon oath from myself they were obtained. The ship had a license from the American Government (clearance papers); also a royal patent from Spain.

28. To the 28th interrogatory deponent answers:

I have neither written or signed any letters or papers since I was captured. I did send a telegram to the owners at Havana and to New York informing them that I had been captured. I wrote two letters to my family and delivered them to the U. S. marshal to be mailed.

29. To the 29th interrogatory deponent answers:

We were steering our course toward Havana when we were first captured. Her course was not altered upon the appearance of the capturing vessel. Our course was always direct for Havana. The ship was not sailing wide or beyond her port of destination
55 at any time previous to her capture. Her course was after capture shaped for Key West on the 23d day of April, 1898.

30. To the 30th interrogatory deponent answers:

I know nothing about any sale or transfer of the ship. If the ship should be restored I believe she would belong to the persons now said to be the owners and to none others.

31. To the 31st interrogatory deponent answers:

There were mounted on board the ship at the time of her capture five guns. There were also guns, bayonets, and swords. She was armed because in the contract which the government had with the company it required that all official mail ships shall have arms and ammunition. She was armed on account of article 26, page 11, of extract of contract of service of marine postal for the use of the captains of mail steamers. Two of them were breech-loaders, 9 centimeters, mounted, one on each side of the ship, with 30 rounds of shot for each; one Maxim gun mounted on the bridge, with ammunition; two signal guns, one on each side of the pilot-house, with ammunition; about 30 or 40 swords; about 20 Remington rifles, with ammunition, and 10 Mauser rifles, with ammunition. The arms have been on board for some time. The cannon were put there about three years ago. The Mauser rifles were put on board about one year ago, in Havana, by the company, in order to have the crew armed. On account of the company, these arms and ammunition were placed on board.

56 32. To the 32nd interrogatory deponent answers:

I have already in my answers to the previous interrogatories answered fully all that I know concerning the true property of the ship, cargo, and its destination.

(S'd) M. QUEVEDO.

Sworn to and subscribed before me May 11th, 1898.

(S'd) J. OTTO,
*Prize Commissioner.*

In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
*vs.*
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of Gabriel Reyna, a witness produced, sworn, and examined *in preparatorio* on the 13th day of May, A. D. 1898, at the court-house, Key West, in said district, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

Deponent says as follows:

My name is Gabriel Reyna. I was a passenger of the 3d class on board the Spanish steamer "Panama" at the time she was captured. I have resided in New York for five years. My home is in San Juan de Porto Rico. I am a Spanish subject. On the night of the 24th day of April, A. D. 1898, the captain of said ship
57 gave orders that all lights on board said vessel should be put out. All lights, including the side lights, were put out, and no lights of any description were allowed on board the ship. During the voyage a man was placed in the topmast with a glass, and was ordered to report whenever a vessel was in sight. When a vessel arrived in sight he would report to the captain of the "Panama," who would scan said vessel.

I heard from some of the passengers that there was among the cargo arms and ammunition in the hold. I was told that the captain had arms and ammunition thrown overboard before capture.

(S'd) GABRIEL REYNA.

Sworn to and subscribed before me May 13th, 1898.

(S'd) J. OTTO,
*Prize Commissioner.*

58 (*Judge's Opinion.*)

THE UNITED STATES
*vs.*
THE SPANISH STEAMSHIP "BUENA VENTURA," "PANAMA," "Catalina," "Miguel Jover," "Pedro," and "Guido" and Cargoes. } Prize.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels the Buena Ventura cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida, between Key West and Cuba, on the 22nd by the U. S. S. Nashville; the Panama cleared and sailedf from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S.

Mangrove, while approaching that port; the Catalina and the Miguel Jover, laden with cotton and staves, cleared from New Orleans on the 21st of the same month, and sailed the evening of the same day for Barcelona and Genoa; the Catalina was captured by the U. S. S. Detroit and the Miguel Jover by the U. S. S. Helena, both on the 24th; the Pedro, which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. New York, and the Guido from Liverpool, bound for Havana by way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. Terror.

They are all Spanish vessels, sailing under the Spanish flag, with royal patents, officered and manned by Spaniards, and with the exception of the Pedro and Guido no question has been
59 raised as to their being enemy's property.

They were all merchant vessels, engaged in regular lines of commerce, and this, *is* the hardship and injustice of the captures before a declaration of war, has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive, and not upon the principles of policy or equity; and while prize courts, where questions of doubt arise, yield as far as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the belligerent had a right to capture the property of the opposing belligerent or antagonist under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by gradual advance of civilization until, by the prize law of today, as accepted, the captor has a right, in the absence of any declaration of exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be lib-
60 erally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found. It cannot be presumed from international history or policy nor from the principles of justice, generosity, or humanity.

The important questions in the cases now pending arise upon

the construction of the proclamation of the President of the United States of April 26th, 1898.

And that, *is* construed by the claimants of the several steamships, each one of them comes within some provision of this proclamation which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors not one of them is exempt.

The proclamation is as follows:

"By the President of the United States of America:

*A Proclamation.*

"Whereas, by an act of Congress approved April 25th, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris:

Now, therefore, I, William McKinley, President of the
61 United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21st, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy; or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

5. Any Spanish merchant vessel which, prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the

rights of neutrals, and the voyages of mail steamers are not
62 to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington on the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-
[SEAL.] eight, and of the Independence of the United States the one hundred and twenty-second.

WM. McKINLEY.

By the President:
ALVEY A. ADEE,
*Acting Secretary of State.*"

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that
63 the proclamation has followed the humane practice of all nations more recently established; but, reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in ports or places within the United States" to give them the right of being allowed until May 21st, 1898, for lading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this depends the cases of the Catalina and of the Miguel Jover, which cleared from New Orleans the evening of April 21st, 1898.

It is argued by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date" or their equivalent should be — understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be — understood is "now."

Which of these views is in harmony with the present views of nations and sanctioned by their recent practice?

Formerly, at the outbreak of war, nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports. In 1870
64 thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco-Turkish war) fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these cases the immunity attached from the outbreak of the war.

Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same number of days was intended, which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

65 While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, What was the intention of the legislators?

It is contended that the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war, it is not considered that the attaching of any such right should influence the decisions in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognize the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war, or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article

should be held to apply to all Spanish merchant vessels in the harbor- of the United States upon April 21, 1898, and exempt them from seizure. This will effect the release of the Catalina and the Miguel Jover.

In regard to the cargoes of such vessels it cannot be considered that it could be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free, and then have them seized so that the cargoes should be liable to condemnation. What makes the free vessel makes the free cargo, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have
66 sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without di-ficulty in the cases against the Pedro and the Guido.

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade with outward cargoes from European—particularly Spanish—ports to the Cubans' ports to discharge, thence to some port of the United States—usually Pensacola—for a load of lumber for the return voyage. The Guido had sailed from Liverpool by way of Santander, Corunna, and La Puebla and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The Pedro, a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports. She had been into Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo she was under charter to proceed to Pensacola to load lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact of their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo brings them within the provision of the fifth article of the proclamation, as being vessels which prior to April 21st, 1898, had sailed from
67 a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold: First, it excuses a vessel which, ignorant of the condition of war, comes

directly into the power of the enemy, and is therefore to that extent a protection to commerce, and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them. Secondly, as the material increase of a nation's possession- is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of these reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores—in fact, a state of war existed before the Pedro left Havana—and having no cargo to bring to this country they were only coming to take property away, and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that, although they were owned by a Spanish corporation of Bilboa, La Flecha, the general managers of which were Spanish citizens and re-
68 sided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien on or equitable ownership of the rest of the stock; so that in reality the vessels were neutral property, and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize, whatever may be the domicile of the partners, and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can equitable interest in the stock of the cor-oration which is the owner. These vessels were owned by a Spanish corporation, sailing under a Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly, if not quite, all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The Panama sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's
69 property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date

of the commencement of war, although no proclamation may have been issued, no declaration made, or no action of the legislative department of the government had. This date has been declared by the act of Congress of April 25th, 1898, and by the proclamation of the President of the next day to have been April 21st, 1898, including that day; so that any Spanish property afloat captured from that time became liable to condemnation unless exempt by the Executive proclamation.

In the case of the Buena Ventura it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection to a vessel coming from a foreign port; but that was not the case. When captured she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture. She was an enemy's vessel, found upon the high seas at the commencement of the war, and not coming within the exemptions of the proclamation.

70 Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declaring it not subject to condemnation, cannot be entertained for a moment.

The policy and law declared in the Executive proclamation is considered to be the law by which this court is governed, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cases of the Pedro and the Guido appear from the testimony and papers found on board to have been mostly shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The Panama, after touching at Havana, was bound to Vera Cruz, and a large portion of her cargo is shown to have been shipped to

Mexico and consigned to residents and presumptively citizens
71 of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but where claims and test affidavits have been filed combatting that presumption, time for further proof will be given, as in the cases of the Pedro and the Guido. When the property can be immediately restored to the claimants it will be so ordered, but otherwise it will be sold pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

72 United States District Court, Southern District of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing pages, numbered from one to seventy-one, inclusive, constitute a true copy of the record and proceedings in the case of The United States *vs.* The S. S. "Panama," prize, lately adjudicated in said court, and remaining on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-sixth day of August, A. D. 1898.

{ Seal District Court of the United States, Southern District of Florida. }

EUGENE O. LOCKE, *Clerk.*

73 Office of clerk U. S. circuit and district courts, southern district of Florida.

KEY WEST, FLA., *August 23rd*, 1898.

*List of Papers Forwarded to the Supreme Court of the United States in the Appeal Case of the S. S. Panama.*

| | | |
|---|---|---|
| #1 | to 6 | 5, certificates payment of tonnage duty. clearance from New York. |
| 7 | " | 9, bills of health. |
| 10 | " | 17, passenger lists. |
| 18 | " | 21, vessel's accounts. |
| 22 | " | 24, store lists. |
| 25 | " | 49, crew lists and accounts. |
| 50 | " | 74, passports. |
| 75 | " | 90, letters from Spanish naval commission, New York. |
| 91 | " | 96, counsul manifests. |
| 97 | " | 186, bills of lading. |
| 187 | " | 204, invoices. |
| 205 | " | 221, consular invoices. |
| 222 | " | 295, manifests. |
| 296 | " | 297, history of guns (two books). |
| 298, log book. | | |
| 299, Spanish maritime law. | | |

Very respectfully,

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

Endorsed on cover: Case No. 16,974. S. Florida D. C. U. S. Term No., 127. The Steamship "Panama," Manuel Quevedo, claimant, appellant, *vs.* The United States. Filed September 3d, 1898.